# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1927

## No. 415

H. F. FERRY, PLAINTIFF IN ERROR,

*vs.*

M. R. CHASTAIN, C. L. KING, L. D. HADLEY, ET AL.

## No. 416

C. L. HARRIS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF T. A. KRAMER, DECEASED, PLAINTIFF IN ERROR,

*vs.*

M. R. CHASTAIN, C. L. KING, H. F. FERRY, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS

FILED JULY 30, 1927

**(32,867, 32,868)**

# (32,867, 32,868)

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*vs.*

M. R. CHASTAIN, C. L. KING, H. F. FERRY, ET AL.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 16, 1927

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[fols. a-c] [Captions omitted]

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[fols. 441-452]

**IN SUPREME COURT OF KANSAS**

No. 27398

M. R. Chastain, Appellant,

v.

E. F. Adams et al., Appellees

Judgment—February 12, 1927

These causes come on for decision and thereupon it is ordered and adjudged that judgment in favor of T. L. Harris as executor of the estate of T. A. Kramer deceased, be reversed and remanded with instructions to render judgment for the plaintiff, and in other respects the judgment is affirmed. It is further ordered that the defendants pay the costs of this case in this court taxed at $— and hereof let execution issue.

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[fols. 453 & 454] Petition for rehearing of King and Ferry, covering one page, filed April 3, 1927, omitted from this print. It was denied and nothing more by order April 16, 1927.

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[fols. 455 & 456] Petition for rehearing of C. L. Harris, covering sixty pages, filed March 10, 1927, omitted from this print. It was denied and nothing more by order April 16, 1927.

[fol. 457] IN SUPREME COURT OF KANSAS

[Title omitted]

ORDER DENYING MOTION FOR REHEARING—April 16, 1927

Now comes on for decision the motion for a rehearing of these causes; and thereupon it is ordered that said motion for a rehearing be overruled.

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[fols. 458 & 459] Clerk's certificate to foregoing transcript omitted in printing.

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[fols. 460 & 460½] IN SUPREME COURT OF KANSAS

[Title omitted]

PETITION FOR WRIT OF ERROR—Filed June 15, 1927

To the Honorable Chief Justice of the Supreme Court of the State of Kansas:

Your petitioner, H. F. Ferry, respectfully shows that on the 16th day of April, A. D. 1927, the Supreme Court of the State of Kansas, rendered a final judgment and decision against your petitioner in the above entitled cause affirming the judgment of the District Court of Butler County, Kansas, against your petitioner and in favor of M. R. Chastain, appellant and cross-appellee, and remanding said cause to the District Court of Butler County, Kansas, with instructions to carry out the judgment in favor of the said M. R. Chastain and against your petitioner, the appeal notwithstanding, all as will more fully appear by reference to the record and proceedings in said cause.

That said Supreme Court of the State of Kansas, is the highest court of the State of Kansas, in which a decision in said suit could be had, and considering himself aggrieved by said final judgment and decision of the Supreme Court of the State of Kansas, your petitioner hereby prays the

allowance of a writ of error from the said decision and judgment of the Supreme Court of the State of Kansas, to the Supreme Court of the United States, and for a citation and an order fixing the amount of bond.

And your petitioner will ever pray, etc.

L. J. Bond, Eldorado, Kansas, Attorneys for Petitioner.

[File endorsement omitted.]

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[fols. 461 & 461½] IN SUPREME COURT OF KANSAS

[Title omitted]

PETITION FOR WRIT OF ERROR—Filed June 15, 1927

To the Honorable Chief Justice of the Supreme Court of the State of Kansas:

Your petitioner, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, respectfully shows that on the 16th day of April A. D. 1927, the supreme court of the State of Kansas, rendered a final judgment and decision against your petitioner in the above entitled cause, reversing the judgment of district court of Butler County, Kansas, in your petitioner's favor and remanding said cause to said district court of Butler County, Kansas, with instructions to said court, to render judgment in favor of said appellant, M. R. Chastain, and against your petitioner, as will more fully appear by reference to the record and proceedings in said cause.

That said supreme court of the State of Kansas, is the highest court of the State of Kansas, in which a decision in said suit could be had, and considering himself aggrieved by said final judgment and decision of the supreme court of the State of Kansas, your petitioner hereby prays the allowance of a writ of error, from the said decision and judgment of the supreme court of the State of Kansas, to

the Supreme Court of the United States, and for a citation and an order fixing the amount of bond.

And your petitioner will ever pray, etc.

Bruce A. Campbell, East St Louis; Bennett R. Wheeler, S. M. Brewster, John L. H[illegible], Topeka, Kans.; C. L. Hunt, Eldorado Kans., Attorneys for Petitioner.

[File endorsement omitted.]

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[fol. 462] [File endorsement omitted]

IN SUPREME COURT OF KANSAS

[Title omitted]

ASSIGNMENTS OF ERROR—Filed June 15, 1927

Now comes the appellant, H. F. Ferry, and in connection with his petition for a writ of error and as an assignment of errors, says:

That during all the time mentioned in the above entitled cause, he was a citizen of the State of Kansas, and a citizen of the United States of America; that the above entitled cause is one in which the appellee, M. R. Chastain, sought to recover from said appellant, the sum of $1,429.94 with interest, under the provisions of certain statutes of the State of Kansas, which are hereinafter set out, on account of the alleged violation of said statutes by said appellant while a director of the Butler County State Bank, a banking corporation, organized and doing business under the laws of the State of Kansas, and in Butler County, Kansas.

Said appellant says, that in the above entitled cause in the trial court, being the District Court of Butler County, Kansas, and in the Supreme Court of the State of Kansas, the validity of Section 9-163 of the Revised Statutes of the State of Kansas, for the year 1923, to wit:

"It shall be unlawful for any president, director, manager, cashier or other officer of any banking institution to assent to the reception of deposits or the creation of debts by such banking institution, after he shall have had knowledge of the fact that it is insolvent or in failing circum-

stances; and it is hereby made the duty of every such officer, agent, or manager of such banking institution to examine into the affairs of the same and if possible to know its condition. And upon failure of any such person to discharge such duties, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances. Every person violating the provisions of this section shall be individually responsible for such deposits so received and all such debts so [fol. 463] contracted: Provided, any director who may have paid more than his share of the liabilities mentioned in this section, may have the proper remedy at law against such other persons as shall not have paid their full share of liabilities."

was drawn in question by said appellant on the ground that said statute in question was repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity and constitutionality of said statute.

And in the trial court and in the Supreme Court of the State of Kansas, the validity of Section 9-164 of the Revised Statutes of the State of Kansas, for the year 1923, to wit:

"In all suits brought for the recovery of the amount of any deposit received or debts so created, all officers, agents or managers of any such banking institution, charged with having so assented to the reception of such deposit or the creation of such debt, may be joined as defendants or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposits charged to have been so received, or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge and assent to such deposits or creation of such debts on the part of such officers, agent or manager so charged therewith."

was drawn in question by said appellant on the ground of said statute being repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity of said statute.

And said appellant respectfully says that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Kansas, in the above entitled cause, there is manifest error in this, to wit:

First. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of Section 9-163 of the Revised Statutes of the State of Kansas, were valid and were not in conflict with and in violation of the provisions of the Fourth Amendment to the Constitution of the United States.

Second. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of Section 9-164 Revised Statutes of the State of Kansas, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

Third. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-163 of the Revised Statutes of the State of Kansas, said appellant was not deprived of privileges and immunities secured to other citizens of the United States.

Fourth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Sec-
[fols. 464 & 464½] tion 9-164 of the Revised Statutes of the State of Kansas, said appellant was not deprived of privileges and immunities secured to other citizens of the United States.

Fifth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-164 of the Revised Statutes of the State of Kansas, the said appellant was not deprived of property without due process of law.

Sixth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-163 of the Revised Statutes of the State of Kansas, the said appellant was not deprived of property without due process of law.

Seventh. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Sec-

tion 9-163 of the Revised Statutes of the State of Kansas, the appellant was not denied equal protection of the law.

Eighth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-164 of the Revised Statutes of the State of Kansas, the appellant was not denied equal protection of the law.

For which errors the said appellant, H. F. Ferry, prays that said judgment of the Supreme Court of the State of Kansas, be reversed and a judgment be rendered in favor of said appellant and for costs.

L. J. Bond, Eldorado, Kan., Attorneys for H. F. Ferry.

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[fol. 465] [File endorsement omitted]

IN SUPREME COURT OF KANSAS

[Title omitted]

ASSIGNMENTS OF ERROR—Filed June 15, 1927

Now comes the appellee, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, and in connection with his petition for a writ of error, and as an assignment of errors, says:

That he is now and during all the time mentioned in the above entitled cause, was a citizen of the States of Kansas, and a citizen of the United States of America, as was also during his life time the said T. A. Kramer; that the above entitled cause is one in which the appellant M. R. Chastain sought to recover from said appellee $1,429.94 with interest, under the provisions of certain statutes of the State of Kansas, which are hereinafter set out on account of the alleged, violation of said statutes by said appellee's decedent, T. A. Kramer, while a director of the Butler County State Bank, a banking corporation, organized and doing business under the laws of the State of Kansas, and in Butler County, Kansas.

Said appellee says that in the above entitled cause in the trial court, being the District Court of Butler County, Kan-

sas, and in the Supreme Court of the State of Kansas, the validity of Section 9-163 of the Revised Statutes of the State of Kansas, for the year 1923, to wit:

"It shall be unlawful for any president, director, manager, cashier or other officer of any banking institution to assent to the reception of deposits or the creation of debts by such banking institution, after he shall have had knowledge of the fact that it is insolvent or in failing circumstances; and it is hereby made the duty of every such officer, agent or manager of such banking institution to examine into the affairs of the same and is possible, to know its condition. And upon failure of any such person to discharge such duties, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank or that it was in failing circumstances. Every person violating the provisions of this section, shall be individually responsible [fol. 466] for such deposit so received, and all such debts so contracted: Provided, any director who may have paid more than his share of the liabilities mentioned in this section, may have the proper remedy at law against such other persons as shall not have paid their full share of such liabilities."

was drawn in question by said appellee on the ground that said statute in question was repugnant to the Constitution of the United States and the decision of the Supreme Court of the State of Kansas, was in favor of the validity and constitutionality of said statute.

And in the trial court and in the Supreme Court of the State of Kansas, the validity of Section 9-164 of the Revised Statutes of the State of Kansas for the year 1923, to wit:

"In all suits brought for the recovery of the amount of any deposits received or debt so created, all officers, agents or managers of any such banking institutions, charged with having so assented to the reception of such deposit, or the creation of such debt, may be joined as defendants or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received, or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge

and assent to such deposit or creation of such debt on the part of such officer, agent or manager so charged therewith."

was drawn in question by said appellee on the ground of said statute being repugnant to the constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity of said statute.

And said appellee respectfully says that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Kansas, in the above entitled cause, there is manifest error in this, to wit:

First. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of Section 9-163, Revised Statutes of the State of Kansas, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

Second. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of Section 9-164 Revised Statutes of the State of Kansas, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

[fol. 467] Third. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-163 Revised Statutes of the State of Kansas, said appellee was not deprived of privileges and immunities secured to other citizens of the United States.

Fourth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-164 of the Revised Statutes of the State of Kansas, said appellee was not deprived of privileges and immunities secured to other citizens of the United States.

Fifth. The Supreme court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-163, Revised Statutes of the State of Kansas, the said appellee was not deprived of property without due process of law.

Sixth. The Supreme Court of the State of Kansas, erred in holding and deciding that by the provisions of Section 9-164 Revised Statutes of the State of Kansas, the said appellee was not deprived of property without due process of law.

Seventh. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of said Section 9-163 Revised Statutes of the State of Kansas, did not deny to said appellee equal protection of the law.

Eighth. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of said Section 9-164 Revised Statutes of the State of Kansas, did not deny to said appellee equal protection of the law.

Ninth. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of said Section 9-163 Revised Statutes of the State of Kansas, as interpreted by the Supreme Court of the State of Kansas, did not deny to said appellee equal protection of the law, in depriving him of the right and benefit of showing that it was impossible for his decedent, T. A. Kramer, to make examination into the affairs of the said Butler County State Bank, during the time in question in said cause.

Tenth. The Supreme Court of the State of Kansas, erred in holding and deciding that the provisions of said Section 9-163 Revised Statutes of the State of Kansas, which provide that if an officer or director of a bank does not examine into the affairs of the bank, he shall be held to have knowledge of the condition of the bank were not in violation of the Fourteenth Amendment to the Constitution of the United States, and did not, as interpreted by said court, deprive appellee of property without due process of law, when the circumstances were that during the time in question it was impossible for said appellee's decedent T. A. Kramer, a director of said bank to make an examination of said bank.

[fols. 468 & 468½] Eleventh. The Supreme Court of the State of Kansas, erred in holding and deciding, that the provisions of said section 9-163 Revised Statutes of the State of Kansas, which by its terms created a conclusive

presumption of knowledge against said appellee's decedent, T. A. Kramer, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

Twelfth. The Supreme Court of the State of Kansas, erred in holding and deciding, that the provisions of said Section 9-164, Revised Statutes of the State of Kansas, which by its terms made the fact that the said banking institution was insolvent or in failing circumstances at the time of the reception of the deposits charged to have been received, prima facie evidence of the assent of said appellee's decedent, T. A. Kramer, to such deposit, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

Thirteenth. The Supreme Court of the State of Kansas has held and decided herein, that the provisions of said Section 9-163 Revised Statutes of the State of Kansas, created a conslusive presumption of knowledge and has held and decided herein that under said provisions said appellee would not be permitted to show any reason or excuse whatsoever, why his decedent, T. A. Kramer, had not made an examination into the affairs of the said Butler County State Bank, and in so holding and deciding, erred in holding and deciding that said statute as so interpreted was not in violation of the Fourteenth Amendment to the Constitution of the United States.

For which errors the said appellee, C. L. Harris, executor of the last will and testament of T. A. Kramer, deceased, prays that said judgment of the Supreme Court of the State of Kansas, be reversed and a judgment be rendered in favor of said appellee and for costs.

C. L. Harris, El Dorado, Kans.; Bruce A Campbell, East St. Louis; Bennett R. Wheeler, S. M. Brewster, John L. Hunt, Topeka, Kans., Attorneys for C. L. Harris, Executor of the Last Will and Testament of T. A. Kramer, Deceased.

[fols. 469-469½] IN SUPREME COURT OF KANSAS

[Title omitted]

ORDER ALLOWING WRIT OF ERROR—Filed June 15, 1927

The above entitled matter coming on to be heard upon the petition of H. F. Ferry, appellant therein, for writ of error from the Supreme Court of the United States, to the Supreme Court of the State of Kansas, and upon examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the question presented by the record in said matter—

It is ordered that a writ of error be and is hereby allowed to this court from the Supreme Court of the United States, and that the bond presented by said petitioner be, and the same is hereby approved.

W. A. Johnston, Chief Justice of the Supreme Court of the State of Kansas.

[File endorsement omitted.]

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[fols. 470 & 470½] IN SUPREME COURT OF KANSAS

[Title omitted]

ORDER ALLOWING WRIT OF ERROR—Filed June 15, 1927

The above entitled matter coming on to be heard, upon the petition of C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellee, therein, for writ of error from the Supreme Court of the United States, to the Supreme Court of the State of Kansas and upon examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter—

It is ordered that a writ of error be and is hereby allowed to this court from the Supreme Court of the United States, and that the bond presented by said petitioner be, and the same is hereby approved.

W. A. Johnston, Chief Justice of the Supreme Court of the State of Kansas.

[File endorsement omitted.]

[fols. 471 & 471½] IN SUPREME COURT OF KANSAS

[Title omitted]

ORDER FIXING BOND

Now on this 15th day of June 1927, came on to be heard the application of H. F. Ferry, appellant, for an order fixing the amount of the bond for costs on appeal to the Supreme Court of the United States, in the above entitled action, and the court being fully informed in the premises, doth fix the amount of said bond for costs at One Thousand Dollars ($1,000.00) conditioned that the said H. F. Ferry, shall pay all costs that may accrue in said action, to the parties to this action, or to the officers of this court, or to the officers of the Supreme Court of the United States or any other person, in case he shall be adjudged to pay them; or in case the same cannot be collected from the other parties to this action, if judgment be obtained against them, then that the said H. F. Ferry will pay all such costs.

Said bond to be approved by the Clerk of said Court.

W. A. Johnston, Chief Justice.

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[fols. 472 & 472½] IN SUPREME COURT OF KANSAS

[Title omitted]

ORDER FIXING BOND

Now on this 15th day of June 1927, came on to be heard the application of C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellee, for an order fixing the amount of the bond for costs on appeal to the Supreme Court of the United States in the above entitled action, and the court being fully informed in the premises, doth fix the amount of said bond for costs at One Thousand Dollars ($1,000.00), conditioned that the said C. L. Harris, as such executor shall pay all costs that may accrue in said action, to the parties to this action, or to the officers of this court or to the officers of the Supreme Court of the United States or any other persons, in case he shall be adjudged to pay them; or in case the same cannot be

collected from the other parties to this action, if judgment be obtained against them, then that the said C. L. Harris, as such executor, will pay all such costs.

Said bond to be approved by the Clerk of said Court.

W. A. Johnston, Chief Justice.

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[fols. 473 & 473½] In Supreme Court of Kansas

Writ of Error—Filed June 15, 1927

The United States of America, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Kansas, Greeting:

Because in the record, proceedings and judgment in a cause lately pending in the Supreme Court of the State of Kansas, being the highest court of the said State, in which a decision in the cause could be had between M. R. Chastain, appellant and cross-appellee, vs. E. F. Adams, appellee, and C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellee, and C. L. King, H. F. Ferry and L. D. Hadley, cross-appellants, wherein was drawn in question the validity of certain statutes of the said State of Kansas, on the ground of their being repugnant to the Constitution of the United States of America, and particularly to the Fourteenth Amendment to said Constitution, and the decision was in favor of such, their validity; it appears that the said H. F. Ferry, appellant, is entitled to have the said judgment reviewed by the Supreme Court of the United States, and he having presented a petition for a writ of error, and assignments of error to that end;

And we being willing that error, if any hath occurred, should be duly corrected and full and speedy justice done to the parties aforesaid, in this behalf, do command you that under your seal, distinctly and openly, you send the record, proceedings and judgment aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, and that you have the same in the said Supreme Court at Washington, D. C., within

thirty days from the date hereof, so that the said Supreme Court of the United States may examine and consider the same and may cause further to be done to correct the error therein if any hath occurred, as of right, and according to the laws and customs of the United States, should be done.

Witness The Honorable William Howard Taft, Chief Justice of the United States, this 15th day of June, in the year of our Lord one thousand nine hundred and twenty-seven.

F. J. Campbell, Clerk of the U. S. District Court.
(Seal of District Court U. S., District of Kansas 1861.)

Allowed by W. A. Johnston, Chief Justice.

[File endorsement omitted.]

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[fol. 474 & 474½] In Supreme Court of Kansas

Writ of Error—Filed June 15, 1927

The United States of America, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Kansas, Greeting:

Because in the record, proceedings and judgment in a cause lately pending in the Supreme Court of the State of Kansas, being the highest court of the said State, in which a decision in the cause could be had, between M. R. Chastain, appellant and cross appellee, vs. E. F. Adams, appellee, and C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellee, and C. L. King, H. F. Ferry and L. D. Hadley, cross-appellants, wherein was drawn in question the validity of certain statutes of the said State of Kansas, on the ground of their being repugnant to the Constitution of the United States of America, and particularly to the Fourteenth Amendment to said Constitution, and the decision was in favor of such, their validity; it appears that the said C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, appellee, is entitled to have the said judgment, reviewed by the Su-

preme Court of the United States, and he having presented a petition for a writ of error, and assignments of error to that end;

And we being willing that error, if any hath occurred, should be duly corrected and full and speedy justice done to the parties aforesaid, in this behalf, do command you that under your seal, distinctly and openly, you send the record, proceedings and judgment aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, and that you have the same in the said Supreme Court at Washington, D. C., within thirty days from the date hereof, so that the said Supreme Court of the United States may examine and consider the same and may cause further to be done to correct the error therein, if any hath occurred, as of right, and according to the laws and customs of the United States, should be done.

Witness The Honorable William Howard Taft, Chief Justice of the United States, the 15th day of June, in the year of our Lord one thousand nine hundred and twenty-seven.

F. J. Campbell, Clerk of the U. S. Dist. Court. (Seal of District Court U. S., District of Kansas, 1861.)

Allowed by W. A. Johnston, Chief Justice.

[File endorsement omitted.]

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[fols. 475-476½] Bonds on writs of error for $1,000.00 each, approved and filed June 15, 1927, omitted in printing.

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[fols. 477-480½] Citations in usual form, showing service on C. L. Harris et al., filed June 21, 1927, omitted in printing.

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[fol. 481] Certificate of lodgment omitted in printing.

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[fol. 482] Return to writ of error omitted in printing.

[fols. 483-489] Orders enlarging time omitted in printing.

[fol. 490] IN THE SUPREME COURT OF THE UNITED STATES

No. 415

STATEMENT OF POINTS TO BE RELIED UPON—Filed August 4, 1927

I

The plaintiff in error, H. F. Ferry, contends that the above entitled cause is one in which the defendant in error, M. R. Chastain, a depositor in the Butler County State Bank, of Butler County, Kansas, sought to recover from said plaintiff in error a sum of money, under the provisions of certain statutes of the State of Kansas, which are hereinafter set out, on account of the alleged violation of said statutes by said plaintiff in error, while a director of said Butler County State Bank.

II

The plaintiff in error contends that in the above entitled cause, in the trial court and in the Supreme Court of the State of Kansas, the validity of Section 9-163 of the Revised Statutes of the State of Kansas for the year 1923, to-wit:

"It shall be unlawful for any president, director, manager, cashier, or any other officer of any banking institution to assent to the reception of any deposits or the creation of debts by such banking institution after he shall have had knowledge of the fact that it is insolvent or in failing circumstances; and it is hereby made the duty of every such officer, agent or manager of such banking institution to examine into the affairs of the same, and if possible know its condition. And upon the failure of any such person to discharge such duty, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances. Every person violating the provisions of this section shall be individually re-

sponsible for such deposits so received, and all such debts so contracted: Provided, any director who may have paid more than his share of the liabilities mentioned in this section may have the proper remedy at law against such other [fol. 491] persons as shall not have paid their full share of said liabilities"

was drawn in question by said plaintiff in error on the ground that said statute was repugnant to the constitution of the United States, and the decision of the Supreme Court of the State of Kansas was in favor of the validity of said statute, and that in the trial court and the Supreme Court of the State of Kansas, the validity of Section 9-164 of the Revised Statutes of the State of Kansas for the year 1923, to-wit:

"In all the suits brought for the recovery of the amount of any deposits received or debt so created, all officers, agents and managers of any such banking institutions, charged with having so assented to the reception of such deposit, or the creation of such debt, may be joined as defendants, or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge on the part of such officer, agent or manager so charged therewith"

was drawn in question by the plaintiff in error on the ground that the statute was repugnant to the constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity of said statute.

III

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163 of the Revised Statutes of the State of Kansas, for the year 1923, were valid, and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and in holding and deciding that by the provisions of said Section 9-163, of the Revised Statutes of the

State of Kansas, said plaintiff in error was not deprived of privileges and immunities secured to other citizens of the United States, and was not denied the equal protection of the law.

IV

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-164, of the Revised Statutes of the State of Kansas, for the year 1923, were valid and were not in conflict with and in violation of the provisions [fol. 492] of the Fourteenth Amendment to the Constitution of the United States, and in holding and deciding that by the provisions of said Section 9-164 of the Revised Statutes of the State of Kansas, said plaintiff in error was not deprived of privileges and immunities secured to other citizens of the United States, and was not deprived of property without due process of law, and was not denied the equal protection of the law.

V

Plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163 of the Revised Statutes of the State of Kansas for the year 1923, which by its terms created a conclusive presumption of knowledge against said plaintiff in error, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

VI

The plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-164 of the Revised Statutes of the State of Kansas, which by its terms made the fact that the said banking institution was insolvent, or in failing circumstances at the time of the reception of the deposit charged to have been received prima facie evidence of the assent of the plaintiff in error to such deposit, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

VII

Plaintiff in error contends that the evidence in said cause fails to show that he knew the said Butler County State Bank was insolvent at the time in question, and fails to show that said Butler County State Bank was insolvent at the time in question, and that the evidence in this cause fails to show that the plaintiff in error assented to the reception of the deposits in question.

VIII

Said plaintiff in error further states that he thinks its necessary for the consideration of the above points that all of the record be printed.

[fols. 493 & 494] L. J. Bond, J. B. McKay, Attorneys for plaintiff in error.

Received a copy of the above statement the 29 day of July, 1927.

C. L. Harris, as Executor of the Estate of T. A. Kramer, Deceased; L. D. Hadley, C. L. King, Defendants in Error. John J. Jones, B. R. Leydig, Attorneys for M. R. Chastain, Defendant in Error.

[fol. 495] [File endorsement omitted.]

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[fol. 496] In Supreme Court of the United States

No. 416

Statement of Points on Which Plaintiff in Error Intends to Rely—Filed July 29, 1927

I

The plaintiff in error, C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, contends that the above entitled cause is one in which the defendant in error, M. R. Chastain, a depositor in the Butler County State Bank, of Butler County, Kansas, sought to recover from said plaintiff in error a sum of money, under

the provisions of certain statutes of the State of Kansas, which are hereinafter set out, on account of the alleged violation of said statutes by said plaintiff in error's decedent, T. A. Kramer, while a director of said Butler County State Bank.

II

The plaintiff in error contends that in the above entitled cause, in the trial court and in the Supreme Court of the State of Kansas, the validity of Section, 9-163 of the Revised Statutes of the State of Kansas for the year 1923, to-wit:

"It shall be unlawful for any president, director, manager, cashier, or other officer of any banking institution to assent to the reception of deposits or the creation of debts by such banking institution, after he shall have had knowledge of the fact that it is insolvent or in failing circumstances, and it is hereby made the duty of every such officer, [fol. 497] "agent, or manager of such banking institution to examine into the affairs of the same, and if possible know its condition. And upon failure of any such person to discharge such duty, he shall, for the purpose of this act, be held to have had knowledge of the insolvency of such bank, or that it was in failing circumstances. Every person violating the provisions of this section shall be individually responsible for such deposits so received, and all such debts so contracted: Provided: any director who may have paid more than his share of the liabilities mentioned in this section may have the proper remedy at law against such other persons as shall not have paid their full share of said liabilities."

was drawn in question by the said plaintiff in error on the ground of said statute's being repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas was in favor of the validity of said statute, and that in the trial court and in the Supreme Court of the State of Kansas, the validity of section 9-164 of the Revised Statutes of the State of Kansas for the year 1923, to-wit:

"In all suits brought for the recovery of the amount of any deposits received or debt so created all officers, agents,

or managers of any such banking institution, charged with having so assented to the reception of such deposit, or the creation of such debt, may be joined as defendants, or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit so charged to have been received, or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge and assent to such deposit or creation of such debt on the part of such officer, agent, or manager so charged therewith."

was drawn in question by said plaintiff in error on the ground of said statute's being repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Kansas, was in favor of the validity of said statute.

III

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said section 9-163, of the Revised Statutes of the State of Kansas, for the year 1923, were valid, and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the [fol. 498] United States and in holding and deciding that by the provisions of said Section 9-163 of the Revised Statutes of the State of Kansas said plaintiff in error was not deprived of privileges and immunities secured to other citizens of the United States, and was not deprived of property without due process of law, and was not denied the equal protection of the law.

IV

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said section 9-164 of the Revised Statutes of the State of Kansas, for the year 1923, were valid and were not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and in holding and deciding that by the provisions of said Section 9-164 of the Revised Statutes of

the State of Kansas, said plaintiff in error was not deprived of privileges and immunities secured to other citizens of the United States, and was not deprived of property without due process of law, and was not denied the equal protection of the law.

V

Said plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of Section 9-163 of the Revised Statutes of the state of Kansas, as interpreted by said Court did not deny to said plaintiff in error the equal protection of the law in depriving him of the right and benefit of showing that it was impossible for his decedent, T. A. Kramer, to make an examination into the affairs of the said Butler County State Bank during the time in question in said cause; and that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of Section 9-163 of the Revised Statutes of the State of Kansas, which provide that if an officer or director of a bank does not examine into the affairs of the bank, he shall be held to have had knowledge of the condition of the bank, were not in [fol. 499] violation of the Fourteenth Amendment to the Constitution of the United States, and did not, as interpreted by the Supreme Court of the State of Kansas, deprive said plaintiff in error of property without due process of law, when the circumstances were that, during the time in question, it was impossible for plaintiff in error's decedent, T. A. Kramer, a director of said bank, to make an examination of said bank.

VI

Plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-163 of the Revised Statutes of the state of Kansas for the year 1923, which by its terms created a conclusive presumption of knowledge against said plaintiff in error's decedent, T. A. Kramer, were not in violation of the Fourteenth Amendment of the Constitution of the United States.

## VII

The plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the provisions of said Section 9-164 of the Revised Statutes of the State of Kansas, which by its terms made the fact that the said banking institution was insolvent, or in failing circumstances, at the time of the reception of the deposit so charged to have been received prima facie evidence of the assent of the said plaintiff in error's decedent, T. A. Kramer, to such deposit, were not in violation of the Fourteenth Amendment to the Constitution of the United States.

## VIII

Plaintiff in error contends tha- the Supreme Court of the State of Kansas, has erred in deciding in this cause that the provisions of said Section 9-163 of the Revised Statutes of the State of Kansas, created a conc*ul*sive presumption of knowledge, and has erred in deciding in this cause that [fol. 500] under said provisions said plaintiff in error would not be permitted to show any reason or excuse whatsoever why his decedent, T. A. Kramer, had not made an examination into the affairs of the said Butler County State Bank, and in so holding and deciding erred in holding and deciding that said statute as so interpreted was not in violation of the Fourteenth Amendment to the Constitution of the United States.

## IX

Plaintiff in error contends that the Supreme Court of the State of Kansas erred in holding and deciding that the fact that the plaintiff in error's decedent, T. A. Kramer was mentally and physically incapable of examining into the affairs of the said Butler County State Bank during all the time in question in this cause would not relieve said decendent from the duty of examining into the affairs of said bank during said time.

## X

Plaintiff in error contends that the evidence in said cause fails to show that his decedent, T. A. Kramer, knew the

said Butler County State Bank was insolvent at the time in question, and fails to show that said Butler County State Bank was insolvent at the time in question, and that the evidence in this cause fails to show that *that* the plaintiff in error's decedent, T. A. Kramer, assented to the reception of the deposits in question, and that the evidence in this cause shows that during all the time in question plaintiff in error's decedent, T. A. Kramer, was mentally and physically unable to assent to the reception of said deposits or to examine into the affairs of said bank, without any fault on the part of the decedent.

[fols. 501-509] XI

Said plaintiff in error further states that he thinks it necessary, for the consideration of the above points, that all of the record in this cause be printed.

John L. Hunt, Bruce A. Campbell, Attorneys for Plaintiff in Error.

Dated at —— this — day of July, 1927.

Received a copy of the above statement this 26th day of July, 1927.

John J. Jones, Attorney for M. R. Chastain, Defendant in Error.

[fol. 510] [File endorsement omitted.]

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[fol. 511] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1927

Nos. 407 to 418

ORDER CONSOLIDATING CASES AND AS TO PRINTING—October 31, 1927

On consideration of a motion of counsel for the plaintiffs in error in these cases to consolidate them all for hearing, with directions to print the whole record in two of the cases and only so much of the record in the remaining cases as is necessary to show the difference between the cases,

It is now here ordered that the said motion be, and the same is hereby, granted, the ultimate cost of printing, of course, to await the event, and the effect of any omission to print, to be at the risk of the plaintiffs in error moving for the consolidation and the limitation of printing.

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Endorsed on cover: File No. 32,867, 32,868. Kansas Supreme Court. Term No. 415. H. F. Ferry, plaintiff in error, vs. M. R. Chastain, C. L. King, L. D. Hadley et al. Term No. 416. C. L. Harris, as executor of the last will and testament of T. A. Kramer, deceased, plaintiff in error, vs. M. R. Chastain, C. L. King, H. F. Ferry et al. Filed July 28, 1927. File Nos. 32,867, 32,868.